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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

SOPHIA CARDONA,

Plaintiff and Appellant,

v.

COUNTY OF SAN JOAQUIN et al.,

Defendants and Respondents.

C067734

(Super. Ct. No. CV035151)

Based on plaintiff Sophia Cardona's failure to obey a discovery order to produce documents at her deposition, the trial court imposed a terminating sanction and dismissed her action. Finding no abuse of discretion on the trial court's part, we shall affirm the judgment of dismissal. We will proceed straight to our discussion, setting forth the factual background there.

DISCUSSION

On appeal, Cardona contends the trial court abused its discretion in imposing a terminating sanction because the documents not produced were privileged, and such a sanction cannot be imposed as a punishment for past violations.

A. Background

Cardona sued defendant San Joaquin County (and related officials; collectively, the County) for wrongful termination and sexual harassment, after the County terminated her in March 2007 from a probationary position as a correctional officer trainee with the County's Sheriff's Department. The County alleges Cardona cheated on an employment examination. Cardona claims that allegation is pretextual. Cardona is on her third amended complaint.

The County sent Cardona a deposition notice, with an attached request to produce documents, for August 17, 2010. Prior to the deposition, Cardona, in a written objection, set forth the same eight boilerplate objections to every document requested.

At the August 17 deposition, Cardona produced not a single document, and admitted she had not even reviewed the document request or conducted any document search.

After Cardona's counsel failed to respond to the County's meet-and-confer letter regarding the document production, the County moved successfully on November 30, 2010, for a document production order (at a continued deposition) and for monetary

sanctions of over \$2,700 against Cardona and her counsel (to be paid within 30 days). The trial court's November 30 order stated as pertinent: "[Cardona] is ordered to produce all documents and tangible things in her possession, custody or control that are responsive to [the County's] deposition notice and attached demand for documents, *without objection.*" (Italics added.)

Cardona petitioned this court on December 21, 2010, for a writ of mandate or prohibition regarding the ordered document production, again claiming privilege. We summarily denied that petition on December 29, 2010.

On January 14, 2011, Cardona attended her continued deposition, but still refused to produce many documents she claimed were privileged. The impasse most significantly involved (1) Cardona's joint tax returns with her husband (i.e., tax returns for 2006-2009); and (2) a series of faxes, e-mails and memoranda relating to job performance, class performance and personnel.

Shortly after this continued deposition, Cardona's counsel, in a letter reply to the County's counsel, and again citing privilege, refused to produce these challenged documents, disagreeing with the County that the documents fell within the trial court's November 30, 2010 "without objection" order. Cardona (and her counsel) also did not pay the monetary sanctions specified in that order.

In March 2011, the County moved successfully for a terminating sanction, and the trial court dismissed Cardona's case.

B. Analysis

A trial court has broad discretion to impose discovery sanctions. We uphold such an order unless it exceeds the bounds of reason. (*Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327 (*Biles*); *Espinoza v. Classic Pizza, Inc.* (2003) 114 Cal.App.4th 968, 975 (*Espinoza*).)

Generally, though, two facts are "prerequisite to the imposition of nonmonetary sanctions such as the [terminating] sanction imposed here: (1) absent unusual circumstances, there must be a failure to comply with a court order, and (2) the failure must be willful." (*Biles, supra*, 124 Cal.App.4th at p. 1327, fn. omitted.)

The record supports the trial court's exercise of discretion in imposing the terminating sanction here.

That record, as aptly summarized by the trial court, shows: "Plaintiff initially failed to produce any documents at her deposition and failed to review the document request prior to her deposition, by her own admission. Defense counsel's attempt at a meet and confer prior to bringing its motion to compel was not responded to by Plaintiff's counsel, and the defense motion went forward resulting in this Court ordering Plaintiff [on November 30, 2010,] to produce documents without objection and to pay a monetary sanction. Plaintiff's request for a writ of

mandate was denied by the Appellate Court, wherein Plaintiff's privilege claim was rejected. Following [the November 30, 2010] order directing Plaintiff to produce documents without objection, Plaintiff continue[d] to refuse to do so. It is clear that nothing short of terminating sanctions will be effective and it would be unfair and unduly prejudicial to force Defendants into trial without discovery responses." The trial court also stated, "Since Plaintiff and Plaintiff's counsel have so far ignored this Court's award of sanctions to be paid within 30 days of the November 30, 2010, order, it is apparent that further monetary sanctions or lesser sanctions to termination of the action would serve no purpose, would fail to effectuate compliance with further Court orders, and would simply be futile."

We add three observations. First, the identical, written boilerplate objections that Cardona made to every document requested by the County—concerning the County's document request attached to Cardona's deposition notice for August 17, 2010—arguably do not preserve her privilege claims, because the applicable discovery statute states that claims of privilege are "waived unless a *specific* objection to . . . disclosure is timely made during the deposition." (Code Civ. Proc., § 2025.460, subd. (a), *italics added*.)

Second, in any event, regarding the challenged income tax returns, Cardona on appeal contends the trial court abused its discretion in imposing a terminating sanction because her joint

tax returns with her husband (i.e., the tax returns for 2006-2009) are privileged. However, evidence showed that the County requested Cardona's tax returns from 1997 to 2009, and that Cardona conceded at her deposition that she has her returns for 2002 through 2005, yet she refused to produce even those returns.

And, third, with respect to the challenged series of faxes, e-mails and memoranda, Cardona on appeal contends the trial court abused its discretion in imposing a terminating sanction because these items constituted Cardona's privileged correspondence with her counsel. Cardona's counsel has identified these items as "relating to" "job performance," "class performance," and "personnel." Evidence showed that Cardona's counsel listed these documents on a discovery "privilege log" in 2008 in response to a demand for document inspection that the County made then. However, the document request that the County attached to Cardona's deposition notice of August 2010—that is, the document request at issue here and which the trial court, in its November 30, 2010 order, directed Cardona to comply with "without objection"—contained all of the document requests contained in the County's 2008 inspection demand.

Terminating sanctions are appropriate where the discovery "violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules.'" (*Doppes v. Bentley*

Motors, Inc. (2009) 174 Cal.App.4th 967, 992.) The record supports the trial court's conclusion in this respect too.

In addition to the record summarized above, we note the following. Cardona's counsel continued to insist, even at the trial court hearing on the terminating sanction on March 25, 2011, that the documents withheld were privileged. But that ship had already sailed with respect to the trial court. The trial court disagreed with Cardona's counsel on the claim of privilege in November of 2010, and we declined to intervene a month later. "A lawyer's duty to obey a court order is not dependent upon the correctness of that order." (*Espinoza, supra*, 114 Cal.App.4th at p. 976.) "A person may refuse to comply with a court order and raise as a defense to the imposition of sanctions that the order was beyond the jurisdiction of the court and therefore invalid, but may not assert as a defense that the order merely was erroneous." (*In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 35.)

In issuing its orders here, the trial court had jurisdiction. No one claims otherwise. Pursuant to the trial court's November 30, 2010 order, and our refusal to intervene, Cardona had to produce all the documents. It is that simple.¹ Any privilege Cardona had to assert in the trial court ended long before the terminating sanction was imposed; and Cardona's continuing insistence on pressing the privilege claims at the

¹ If need be, Cardona could have sought a protective order covering the document production; but she never did so.

hearing on the terminating sanction further supported the trial court's view that only a terminating sanction would suffice here.

DISPOSITION

The judgment is affirmed.

BUTZ, J.

We concur:

NICHOLSON, Acting P. J.

HOCH, J.